

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**DARNELL A. ALLEN, JR.,**

**Petitioner,**

**vs.**

**Civil Action No. 2:05 CV 16  
(Maxwell)**

**THOMAS MCBRIDE, Warden,**

**Respondent.**

**ORDER**

It will be remembered that on February 24, 2005, *pro se* Petitioner Darnell A. Allen, Jr., an inmate at Mt. Olive Correctional Complex, filed a Petition Under 28 U.S.C. § 22554 for a Writ of Habeas Corpus by a Person in State Custody.

It will further be remembered that the Petition was referred to United States Magistrate Judge John S. Kaull in accordance with Rule 83.13 of the Local Rules of Prisoner Litigation Procedure.

After conducting an initial screening and review, United States Magistrate Judge John S. Kaull, by Order entered April 5, 2005, warned the Petitioner that his § 2254 Petition would be recommended for dismissal unless he could demonstrate that said Petition was timely filed. The docket in this matter reflects that on April 14, 2005, the Petitioner responded to Magistrate Judge Kaull's April 5, 2005, Order.

By Order entered April 26, 2005, Magistrate Judge Kaull found that it appeared that the Petitioner's Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody was, in fact, timely, and directed the Respondent to file an Answer to said Petition.

The Respondent's Consolidated Answer, Motion For Summary Judgment And Memorandum In Support Thereof were filed on June 24, 2005; the Petitioner's Rebuttal Response In Opposition To Respondent's Motion For Summary Judgment was filed on August 1, 2005; and the Respondent's Reply was filed on August 11, 2005.

On December 20, 2005, United States Magistrate Judge John S. Kaull issued an Opinion/Report And Recommendation in the above-styled habeas corpus action, wherein he recommended that the Respondent's Motion For Summary Judgment be granted and that the Petitioner's Petition Under 28 U.S.C. § 2254 For Writ Of Habeas Corpus By A Person In State Custody be denied on the merits and dismissed with prejudice.

Magistrate Judge Kaull's Opinion/Report and Recommendation expressly advised the parties, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections to said Opinion/Report And Recommendation within ten days after being served with a copy of the same.

The record in this matter reflects that on February 22, 2006, the Petitioner's Objections To The Proposed "Opinion Report And Recommendations" Offered By The Honorable Magistrate John S. Kaull was filed with the Court.

Upon examination of Magistrate Judge Kaull's Opinion/Report And Recommendation, it appears to the Court that the issues raised by the Petitioner in his Petition Under 28 USC § 2254 For Writ Of Habeas Corpus By A Person In State Custody were thoroughly considered by Magistrate Judge Kaull in his Opinion/Report And Recommendation. Furthermore, upon consideration of the Petitioner's objections to said Opinion/Report And Recommendation, it appears to the Court that the Petitioner has not

raised any issues that were not thoroughly considered by Magistrate Judge Kaull in said Opinion/Report And Recommendation. Moreover, the Court, upon an independent *de novo* consideration of all matters now before it, is of the opinion that Magistrate Judge Kaull's Opinion/Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in the above-styled habeas corpus action.

Therefore, it is

**ORDERED** that the Opinion/Report And Recommendation filed by United States Magistrate Judge John S. Kaull on December 20, 2005 (Docket No. 19), be, and the same hereby is, **ACCEPTED** in whole and that this habeas corpus action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

**ORDERED** that the Respondent's Motion For Summary Judgment (Docket No. 12), be, and the same is hereby, **GRANTED**. It is further

**ORDERED** that the Petitioner's Petition Under 28 USC § 2254 For Writ Of Habeas Corpus By A Person In State Custody (Docket No. 1), be, and the same is hereby, **DENIED** on its merits and **DISMISSED, with prejudice**.

It is further

**ORDERED** that should the Petitioner desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$250.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the Petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate

Procedure, seek leave to proceed *in forma pauperis* from the United States Court Of Appeals For The Fourth Circuit.

**ENTER:** March 15, 2006

**/S/ Robert E. Maxwell**  
United States District Judge